

Senate File 2333 - Reprinted

SENATE FILE 2333
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 3103)

(As Amended and Passed by the Senate March 1, 2010)

A BILL FOR

1 An Act relating to health care facilities and programs,
2 including hospital inspector requirements and dependent
3 adult abuse.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135B.9, Code 2009, is amended to read as
2 follows:

3 **135B.9 Inspections and qualifications for hospital**
4 **inspectors — protection and advocacy agency investigations.**

5 1. The department shall make or cause to be made inspections
6 as it deems necessary in order to determine compliance with
7 applicable rules. Hospital inspectors shall meet the following
8 qualifications:

9 a. Be free of conflicts of interest. A hospital
10 inspector shall not participate in an inspection or complaint
11 investigation of a hospital in which the inspector or a member
12 of the inspector's immediate family works or has worked within
13 the last two years. For purposes of this paragraph, "immediate
14 family member" means a spouse; natural or adoptive parent,
15 child, or sibling; or stepparent, stepchild, or stepsibling.

16 b. Complete a yearly conflict of interest disclosure
17 statement.

18 c. Biennially, complete a minimum of ten hours of continuing
19 education pertaining to hospital operations including but not
20 limited to quality and process improvement standards, trauma
21 system standards, and regulatory requirements.

22 2. In the state resource centers and state mental health
23 institutes operated by the department of human services, the
24 designated protection and advocacy agency as provided in
25 section 135C.2, subsection 4, shall have the authority to
26 investigate all complaints of abuse and neglect of persons
27 with developmental disabilities or mental illnesses if the
28 complaints are reported to the protection and advocacy agency
29 or if there is probable cause to believe that the abuse has
30 occurred. Such authority shall include the examination of all
31 records pertaining to the care provided to the residents and
32 contact or interview with any resident, employee, or any other
33 person who might have knowledge about the operation of the
34 institution.

35 Sec. 2. Section 235E.2, subsection 1, paragraph a, Code

1 Supplement 2009, is amended to read as follows:

2 a. The department shall receive and evaluate reports
3 of dependent adult abuse in facilities and programs. The
4 department shall inform the department of human services of
5 such evaluations and dispositions ~~for inclusion in~~ and those
6 individuals who should be placed on the central registry
7 for dependent adult abuse ~~information~~ pursuant to section
8 ~~235B.5.~~ 235E.7. If the department believes the situation
9 involves an immediate danger to the public health, safety, or
10 welfare requiring immediate agency action to seek emergency
11 placement on the central registry, the department may utilize
12 emergency adjudicative proceedings pursuant to section 17A.18A.

13 Sec. 3. Section 235E.2, subsection 10, Code Supplement
14 2009, is amended to read as follows:

15 10. The department shall adopt rules which require
16 facilities and programs to separate an alleged dependent
17 adult abuser from a victim following an allegation of
18 perpetration of dependent adult abuse and prior to the
19 completion of an investigation of the allegation. Independent
20 of the department's investigation, the facility or program
21 employing the alleged dependent adult abuser shall conduct
22 an investigation of the alleged dependent adult abuse and
23 determine, what, if any, employment action should be taken
24 including but not limited to placing the alleged dependent
25 adult abuser on administrative leave or reassigning or
26 terminating the alleged dependent adult abuser as a result of
27 the department's investigation. If the facility or program
28 terminates the alleged dependent adult abuser as a result of
29 the department's investigation, the alleged dependent adult
30 abuser shall disclose such termination to any prospective
31 facility or program employer.

32 Sec. 4. Section 235E.2, subsection 12, Code Supplement
33 2009, is amended to read as follows:

34 12. An inspector of the department may enter any facility
35 or program without a warrant and may examine all records

1 pertaining to residents, employees, former employees, and
2 the alleged dependent adult abuser as long as the inspector
3 informs the person in charge of the facility or program, or
4 the person's designee, that the inspector is investigating an
5 alleged case of dependent adult abuse. If upon entry, the
6 inspector has knowledge of or learns during the course of an
7 investigation that alleged dependent adult abuse is suspected
8 or is being investigated, the inspector shall inform the person
9 in charge that the inspector is investigating an alleged case
10 of dependent adult abuse. An inspector of the department
11 may contact or interview any resident, employee, former
12 employee, or any other person who might have knowledge about
13 the alleged dependent adult abuse. Prior to the interview, the
14 department shall provide written notification to the person
15 under investigation for dependent adult abuse that the person
16 is under investigation for dependent adult abuse, the fact
17 situation and the nature of the abuse being investigated, the
18 possible civil consequences of founded abuse, the requirement
19 that the department forward a report to law enforcement if
20 the department's investigation reveals a potential criminal
21 offense, that the person has the right to retain legal counsel
22 at the person's expense and may choose to have legal counsel,
23 union representation, or any other desired representative
24 employed by the facility present during the interview, and
25 the fact that the person has the right to decline to be
26 interviewed or to terminate an interview at any time. The
27 person under investigation shall inform the department of the
28 representatives desired to be present during the interview
29 and not unreasonably delay the interview to organize their
30 representatives' presence at the interview. An inspector
31 may take or cause to be taken photographs of the dependent
32 adult abuse victim and the vicinity involved. The department
33 shall obtain consent from the dependent adult abuse victim or
34 guardian or other person with a power of attorney over the
35 dependent adult abuse victim prior to taking photographs of the

1 dependent adult abuse victim.

2 **Sec. 5. NEW SECTION. 235E.6 Dependent adult abuse finding—**
3 **notification to employer and employee.**

4 Upon a finding of founded dependent adult abuse by a
5 caretaker, the department shall provide written notification of
6 the department's findings to the caretaker and the caretaker's
7 employer. In addition, the written notification shall detail
8 the consequences of the findings and placement on the dependent
9 adult abuse registry, the caretaker's appeal rights, and
10 include a separate appeal request form. The written appeal
11 request form shall clearly set forth that the caretaker shall
12 not be placed on the dependent adult abuse registry until final
13 agency action is taken if an appeal is filed within fifteen
14 days.

15 **Sec. 6. NEW SECTION. 235E.7 Appeal process — dependent**
16 **adult abuse.**

17 1. Upon the department's finding of dependent adult abuse,
18 the caretaker shall file an appeal request with the department
19 within fifteen days of receiving the notification of the
20 finding of abuse. If a request for an appeal is filed within
21 fifteen days of the notification of the finding, the department
22 shall not place the caretaker on the registry until final
23 agency action is taken. For a request for an appeal filed
24 within fifteen days of the notification of the finding, the
25 contested case hearing shall be held within sixty days of the
26 request. The caretaker may extend the hearing timeframe by
27 thirty days one time. Additional requests for an extension
28 must be agreed upon by all parties or for good cause. The
29 department shall issue a determination of final agency action
30 within forty-five days of the contested case hearing. Upon
31 final agency action, further appeal rights shall be governed
32 by chapter 17A.

33 2. If a caretaker fails to request an appeal within fifteen
34 days, the caretaker shall have an additional forty-five
35 days to file an appeal pursuant to chapter 17A. However, the

1 caretaker's name shall be placed on the registry pending the
2 outcome of the appeal.

3 3. If the caretaker requests an appeal within fifteen days,
4 the caretaker may waive the expedited hearing under subsection
5 1 to proceed under chapter 17A, but the caretaker's name shall
6 be placed on the registry pending the outcome of the appeal.

7 Sec. 7. STUDY. The legislative council is requested to
8 establish an interim study committee to evaluate due process
9 requirements relating to child abuse and dependent adult abuse
10 under Code chapters 235A and 235B. The committee shall issue
11 a report of its recommendations to the general assembly by
12 January 15, 2011.